

COMMISSIONERS APPROVAL

CHILCOTT 

THOMPSON 

LYONS

PLETTENBERG (Clerk & Recorder)

Date.....June 5, 2007

Members Present..... Commissioner Greg Chilcott,  
Commissioner Alan Thompson and Commissioner Howard Lyons

Minutes: Glenda Wiles

The Board met to discuss and make a decision on issuing a Request for Proposal or Request for Qualifications for professional services in order to assist with subdivisions. Present at this meeting was Planning Director Karen Hughes and Civil Counsel Alex Beal. Karen presented a draft Request for Commission Action that will allow the Planning Office to issue a Request for Proposals (RFP) for professional planning consulting services. This RFP will generate a pool of pre-qualified applicants in order to assist in the review of specific development proposals, contingent on agreement on a settlement proposal (Lords et al litigation) that will require these services.

After making some minor changes and setting a date of June 25<sup>th</sup> to open the RFP's, Commissioner Thompson made a motion that the RFP to create a pre-qualified pool of consultants for professional planning services be issued and that the portion of the RFP related to the review of the specific development proposals be issues, contingent on and consistent with the agreement on a settlement proposal that requires these services. Commissioner Lyons seconded the motion and all voted "aye".

It was agreed one Commissioner, a Planning Staff member and Planning Director will make a review and recommendation of the RFP's received.

In other board business, Karen Hughes addressed the priorities established by the planning staff and the citizens for county wide zoning, county planning goals and practices. She stated these goals tie into the proposed three-year planning budget. She stated they focused in on three areas: 1) technical & management assistance, start up funding for open lands program along with coordination/administrative costs; 2) dedicate increased resources for data gathering in order to assist in the modeling specifically for streamside setbacks and open lands; 3) put more money into public outreach and engagement. Karen also noted one of the big questions is how the public and developer gauge if progress is being made. One way is to set up a small oversight committee to mark the benchmarks for progress. Karen indicated she is looking at grant monies, and

any community enhancements which include private donations and the normal cost increases that come with each budget year. The difficulty in grants and community enhancements is not knowing each year the amount of monies that might or might not come in. The Board thanked Karen, noting their appreciation for the planning staff's work.

In other business the Board reconvened to review the final proposed Release and Settlement Agreement on the Lords Et all litigation with eleven plaintiffs. Present at this meeting was Civil Counsel Alex Beal, Planning Director Karen Hughes and the Plaintiff Attorneys Bill VanCanagan and Terrance Perry. It was noted there were no members of the public present. A letter from Phillip Taylor was also presented for review which stated in part that the public has a right to a meaningful opportunity to comment. (See attached letter). A letter from Shaen McElravy was also presented for review which stated in part the Board's disregard for the emergency interim zoning, called '1 for 2' that was passed by the voters in November. (See attached letter).

Commissioner Thompson noted the final draft appears to be corrected. (See attached). He also noted Mr. Taylor's letter is specific to the settlement agreement; however Mr. McElravy's letter relates to the one for two interim zoning and not the settlement agreement. Commissioner Thompson felt Mr. Taylor's letter seems to be an embellishment of what 'negative things can happen' and Commissioner Thompson feels this agreement does not give the developers free rein on development. Commissioner Thompson also noted Mr. Taylor's comment about the 'Gang of Ten' is derogatory and Mr. Taylor does not represent a large number of citizens, but rather a small interest group.

Attorney Alan Chronister was then put on conference call. He stated he reviewed Mr. Taylor's letter addressing the portion that states this will be taken to court. Alan stated once this litigation is removed from federal court it could be remanded to state court, but those would be under rare circumstances that Alan does not think is applicable. Alan also addressed Mr. Taylor's concerns about the public right and the developer's right to sue. Alan stated all issues can 'test of the water' so to speak and in regard to this present case, he saw no need from the County to litigate this case due to monetary risks, interim zoning risks thus ending up having an adverse ruling on the statutory time lines. The answer to the 97 page complaint is on record with the federal court. Alan also stated the three plaintiffs that are not settled within this agreement were discussed yesterday.

In regard to the right to participate, Alan reiterated his comments from yesterday that he has relied on the County Attorney's Office and Civil Counsel Alex Beal's opinion on these matters. He does agree Ravalli County has gone to great lengths to allow the public notice, comment etc. which is unusual. Normally agreements are hammered out amongst the various parties, binding the respective clients. That could have been done in this case, but Ravalli County chose to allow public participation.

In regard to the final draft, the only changes made were to paragraph #7 by removing a couple of words "on it" and left the final determination to County Commissioners, and to

remove “other than those”. The Plaintiff’s Attorneys’ (Terrance Perry and Bill VanCanagan) stated they were fine with those changes. Alan concurred the settlement should be signed.

Commissioner Thompson made a motion that on the advice of legal counsel the Commissioners execute the release and settlement agreement on Lords Et all litigation. Commissioner Lyons seconded the motion and all voted “aye”.

Bill VanCanagan thanked the county staff and Commissioners for their combined effort to bring this case to settlement. At first he did not feel the settlement would occur, but is very pleased it did. Commissioner Chilcott concurred with the professional work that has been done and appreciated the plaintiff’s willingness to work in good faith.

In other business the Board held an interview with Clay Dethlefsen for the Streamside Setback Committee.

Minutes: Beth Farwell

The Board met with Fair Board Members Winn Smith, Les Linendoll and Fair Manager Gary Wiley to discuss hiring an architect for proposed SAFE building to be constructed at the Fairgrounds.

Winn started the meeting with a re-cap of past approvals and consulted with Civil Council Alex Beal, regarding the proposed building and the requirements.

Commissioner Chilcott questioned if a Request for Qualifications (RFQ) would be required for an architect on this project. Alex consulted the Montana Code book for the exact requirements. Gary added an outline for the project which included the approximate cost. Brief discussion followed.

Alex indicated if the total cost is under \$20,000, a RFQ is not necessary. Commissioner Chilcott stated it should be a competitive process. Winn asked what he could do regarding obtaining an architect. Alex replied with the Board’s approval an architect could be hired. Commissioner Chilcott stated Winn could negotiate with architects that were willing to involve themselves in this potential building. Alex will look into loan restrictions for the project. Commissioner Chilcott recommended obtaining a letter of commitment from the architect. Winn questioned if their estimates are part of lease agreement, could they then request an RFP.

**Commissioner Lyons made a motion to grant authority to the Fair Commission to obtain an architect and go out for an RFP on the construction of this building. Commissioner Thompson seconded the motion, all voted ‘aye’.**

Minutes: Glenda Wiles

The Board discussed the actual transition of three Commissioners to five Commissioners. Alex stated the Local Government Study Commission transition plan calls for June 13<sup>th</sup> to be the swearing in date of the three new Commissioners. Alex suggested the current board set some dates that will follow the 13<sup>th</sup> of June. MCA 7-4-2109 allows the Chairman to be designated, but does not set a date for that designation. Alex suggested they set that date as early as possible. Due to the upcoming vacations of Commissioner Thompson and Chilcott, the first date that all five Commissioners will be present will be Monday June 25<sup>th</sup> which might be the date the Board is re-organized (chair elected).

Commissioner Thompson also noted the Human Resource Officer Skip Rosenthal is gone until the 19<sup>th</sup> of June. He stated he will be back on the 18<sup>th</sup> and would be willing to give the new Commissioners a tour of departments and personnel.

Commissioner Chilcott stated the current Board would like the new Commissioners to have training on ethics, Fair Labor Standard Act, Montana Statutes, Planning, and Flood Plain issues along with time for Civil Counsel. He stated most of this type of training can be done while both he and Commissioner Thompson are on vacation. It was agreed that on the 13<sup>th</sup>, Glenda will help the new Commissioners settle into their offices, working with the I.T. Department for the computers, telephone voice mails etc. Skip will also spend a portion of the day with them. On the 14<sup>th</sup> and 15<sup>th</sup>, Glenda will work with Skip to set up dates with the Internal Auditor, Planning Staff and Civil Counsel.

In other business, Commissioner Thompson attended a Human Resource meeting in Hamilton.

Date: March 15<sup>th</sup>, 2007  
To: Ravalli County Commissioners  
From: Shaen McElravy M.S.W.,L.A.C.  
4721 Teddy Bear Ln  
Stevensville, MT 59870  
Re: 1-2 Zoning

Dear Commissioners,

I am concerned about the repeated disregard of the emergency interim zoning called 1 per 2. It appears that there have been repeated attempts to thwart the will of the voters. They voted last November to limit subdivision to one house per 2 acres. There was not any language about average density. Giving an approval to the latest subdivision request is in direct conflict with the public trust. The public trusted you to uphold their request and laws.

Now you are holding public meetings to further ferret out the interpretations of the 1 per 2 zoning. You are continuing to do so, even though George Corn your County Attorney has given you specific advice that the final plat needs to be 2 acres minimum.

It appears that you are continuing to waste the public's time and County resources to further your interests with the developers in this county who want the rules bent for them. These actions continue to destroy any public trust you may have had with them. The current Oligarchy form of government needs to change now and that is why the voters voted for additional commissioners.

If you wish to rebuild any public trust, I ask you to pass a referendum extending the 1 per 2 an additional year. I would like to see the referendum completed by April 1<sup>st</sup> 2007. The County Planning Department has already informed your office and the public that it will take them 18-20 months to complete the zoning process. It is within your power to extend it now.

I do not want to see what happened last fall when the new subdivision regulations were to go into affect by October 1<sup>st</sup> and they were not. I remember the minutes from May 2006 when commissioner Chilcott and Thompson stated that completing the subdivision regulations were a priority and it did not happen.

I have serious concerns that the commissioners' lack of action last year has made the county and its citizens more liable for pending lawsuits from the developers. Let's not make the same mistake twice.

Shaen McElravy

rec'd  
By email 6/5/07

Phillip Taylor  
2343 Meridian Road  
Victor, Montana 59875  
(406) 642-3289 t&f

June 4, 2007

Greg Chilcott, Chair  
Ravalli County Commissioners  
Ravalli County Courthouse  
Hamilton, Montana 59840

RE: Settlement Agreement

Gentlemen:

We have read the Settlement Agreement (Final) thoroughly as of this evening. There are many issues relative to this agreement that we feel need to be scrutinized further to evaluate the total impact of what this agreement will achieve for the parties. In our opinion there were issues that to our knowledge were not addressed prior to any settlement negotiations taking place. Issues such as a request for this case to be remanded to a state court by Allen B. Chronister, Esq. Attorney for Defendant where a more expeditious process as well as a more fair and favorable environment would have been available. The issue that deals with "Sitting on their Rights" should have been considered. Why did the plaintiffs wait so long to demand their rights? Certainly the 1 per 2 Resolution in and of itself is one issue that should be adhered to in all cases where the time table on preliminary plat approval had not been met. The Initiative is specific in this regard. Though the Defendant Attorney believes this case would have resulted in an extreme liability for the county if it had gone to trial, there were a number of issues that could have been tested to see how warm the water is. But we have not been able to find the Defendants response to the Plaintiffs 97 page complaint. Was there a response? We believe the public would rather take the risk of a potential multi million dollar judgment liability by going to trial and allowing this case to be decided on its merits. The health, welfare and safety issues that are required to be addressed by the 1 per 2 initiative will be set aside by this agreement and several "towns" will be built in areas not conducive to such large developments. As all of you well know, there are no effective controls over these issues neither in the subdivision regulations nor in the Montana Subdivision and Platting Act.

We believe the public has a right to participate in the settlement proceedings; after all they are paying for the process and they pay for the insurance policy. The public has a right to a meaningful opportunity to comment. The public cannot provide meaningful comment unless given the time to digest the issues at hand and evaluate the ramifications of those issues as they relate to this Settlement Agreement. The public has been kept in the dark about these negotiations with the only opportunity for comment occurring on June 4, 2007 for a limited amount of time. The Settlement Agreement was not even formalized at that point. There were insertions suggested as well as deletions, there were various complex Schedules attached as a part of the Agreement and the complaint itself numbers 97 pages. There is the issue of the three Plaintiffs who have not agreed with the settlement, what will happen there? How in good conscience can you expect the public to comment intelligently on such a broad range of issues when given an hour perhaps, to review what has been presented. The citizen involvement with the Interim Zoning Initiative has been an overwhelming example of a grassroots effort, one that remained in tact despite the many and varied attempts to negate and/or destroy that effort. We

view this as just another attempt to set aside the public's interest in favor of special interests. This so called rush to pass the agreement, and especially on the day when an election may push the issues in another direction, is to us unconscionable. To approve this Settlement Agreement is a sell out of the citizens interests, a rolling over if you will, for the self interests of a few.

This inclusion in the agreement "to further the parties' shared interest in the fair, equitable and transparent application of Ravalli County Subdivision Regulations and the 1 per 2 regulation and to further Defendant's interest in the continued viability and preservation of the 1 per 2 regulation;" does not represent the view of the general public. The Plaintiffs and/or their associates have no interest, shared or otherwise, in the fair application of Ravalli County Subdivision Regulations. The litany of court cases and actions attempting to discredit and cause the 1 per 2 Initiative to be negated is associated with the same individuals and organizations. The first effort in a suit filed by the Realtors Association attempted to remove the initiative from the ballot. It failed. Then the campaign to defeat the initiative was waged by the Realtors and Builders who spent over \$40,000.00 to defeat it. They lost. Then a suit was filed, known as the "The Gang of 10", a suit intended to throw out the Interim Zoning Initiative as well as the Ravalli County Study Commission results that were approved in the November 7, 2006 election. They lost again. And now this suit originated by Rebecka Lords. All these efforts combine to prove there is no shared interest as referenced above. Attorney Vancanagan's name appears on the masthead of the latter two suits both of which indicate profit as the motive not shared interest. He knows that. This agreement is simply another effort to set aside the public's interests and "give the store to the developers." It is not fair to approve this agreement. It has been said that the citizens will lose this battle for controlled development, that the opponents of control will litigate our efforts to a point where we don't have the financial wherewithal to fight the special interests any more. There is no question that we are approaching that point and if that makes the Plaintiffs and their Attorney's proud it's a sad day for America and democracy. However if you approve this Settlement Agreement today, we will attempt to take our side of the issue to court once again.

We ask on behalf of the overwhelming number of citizens who passed the Interim Zoning Initiative, that you set these negotiations aside for three or four weeks to give the public the opportunity to evaluate whether they wish to allow some subdivisions to be excused from having to comply with the Interim Zoning resolution.

Phillip R. Taylor, BFP Action

## RELEASE AND SETTLEMENT AGREEMENT

THIS RELEASE AND SETTLEMENT AGREEMENT ("Release") is made by and among Rebecka Z. Lords, Flat Iron Ranch, L.L.C., Big Sky Development Group, L.L.C., Sunnyside Orchards, L.L.C., Kearns Properties, L.L.C., Thomas Gacek, Rudy and Bernice Kratofil, Bitterroot Land Co., L.L.C., Jeff and Tracy Scussel, Stanley Norgaard, as Trustee of Norgaard Family Trust, Terry Nelson and MAN Enterprises, L.L.C. (hereinafter "Plaintiffs" or "applicants") and Defendant, Ravalli County, a duly existing political subdivision of the State of Montana.

### Recitals:

WHEREAS, prior to November 7, 2006, the Plaintiffs, and each of them, submitted subdivision applications ("applications"; individually: "application") to Ravalli County pursuant to which each sought approval of planned subdivisions within Ravalli County;

WHEREAS, on November 7, 2006, the voters in Ravalli County adopted an Emergency Interim Zoning Regulation pursuant to which subdivisions were limited to a density of one residence per two acres for a period of one (1) year (hereinafter referenced as the "1 per 2 regulation");

WHEREAS, none of the applications filed by Plaintiffs satisfied the 1 per 2 regulation;

WHEREAS, on or about November 20, 2006, Defendant adopted a new set of Ravalli County Subdivision Regulations (hereinafter referred to as the "New Regulations") which, thereafter, it sought to apply to each of the applications;

WHEREAS, during December of 2006, Defendant notified each of the Plaintiffs that each of their applications failed to meet the requirements of the 1 per 2 regulation and that none of such applications could proceed through the subdivision review process until and unless each met the requirements of the 1 per 2 regulation or unless each applicant obtained a variance as set forth in said regulation;

WHEREAS, as of December 2006, Plaintiffs could not obtain or seek to obtain a variance from the 1 per 2 regulation since the body authorized by said regulation to process variance requests, the Board of Adjustment, did not exist;

WHEREAS, on or about January 5, 2007, the Plaintiffs commenced an action (hereinafter referred to as the "Action") against Ravalli County in the United States District Court for the district of Montana, Missoula Division, Case No. CV 07-002-M-DWM, pursuant to which Plaintiffs sought, inter alia, compensatory and punitive damages against Ravalli County and by which Plaintiffs, and each of them, sought to enjoin Ravalli County from applying the 1 per 2 regulation to any of the applications, declaratory and other affirmative relief;

WHEREAS, the Plaintiffs and Defendant have engaged in good faith negotiations to resolve the Action to, inter alia, avoid the costs, expenses and vagaries attendant to litigation, to further the parties' shared interest in the fair, equitable and transparent application of Ravalli County Subdivision Regulations and the 1 per 2 regulation and to further Defendant's interest in the continued viability and preservation of the 1 per 2 regulation;



WHEREAS, all Plaintiffs excepting only:

- (i) Rebecca Z. Lords (subdivision name: Moiese Meadows);
- (ii) Thomas Gacek (subdivision description: SS04, block 16, lot 25 AP);
- (iii) Terry Nelson and MAN Enterprises, L.L.C.; and
- (iv) Jeff and Tracy Scussel.

assent to the application of the New Regulations to each of their applications; and

WHEREAS, the parties are desirous of resolving the Action on the following terms and under the following conditions:

1. The New Regulations apply to all applications except those submitted by:

- (i) Rebecca Z. Lords (subdivision name: Moiese Meadows);
- (ii) Thomas Gacek (subdivision description: SS04, block 16, lot 25 AP);
- (iii) Terry Nelson and MAN Enterprises, L.L.C.; and
- (iv) Jeff and Tracy Scussel.

The parties agree that each of the applications identified in paragraphs (i) through (iv) above, inclusive, are governed by and subject only to the terms, conditions and processes articulated by Ravalli County Subdivision Regulations in force and effect prior to November 7, 2006, unless otherwise agreed to herein.

2. A final determination on each of the subdivisions hereinafter identified in this Paragraph 2 will be rendered by Defendant consistent with the time frames set forth in Schedule "A" attached hereto and expressly incorporated herein by reference, subject only to delays attendant to acts beyond the control of the Defendant. For purposes of this section, the phrase "delays attendant to acts beyond the control of the Defendant" shall be narrowly construed. Defendant acknowledges that it designed and prepared the Schedule "A" timeline as a condition to this Release and Settlement Agreement and after consideration of all available resources including available staff and independent or outside consultants and all other relevant information, and that the deadlines identified in the timeline constitute a material inducement to the Plaintiffs to enter into this Settlement Agreement. In no event shall this provision be construed to release Defendant from using its best efforts to avoid or remove any causes for delay or from immediately notifying the pertinent applicant, in writing, as soon as it has knowledge of the delay.

Unless as a result of acts beyond Defendant's control, as defined herein, in no event shall this provision be construed to permit the Defendant, its agents, agencies, political subdivisions, representatives and employees, to delay the processing of any application for more than thirty (30) days in the aggregate.

In the event that any application is delayed due to an act or event within the control of the Defendant for more than thirty (30) days in the aggregate, the applicant at issue, as a precondition to pursuing any judicial remedy preserved within this Agreement, must first provide the Defendant with written notice of default. Defendant shall have seven (7) business days from the date on which it receives notice of default within which to cure such default ("cure period"). The Defendant agrees to maintain relevant consultants essentially on standby to be called in to assist the Defendant to timely cure any such default.

In the event that such default is not cured within the cure period, then the applicant at issue will be entitled to immediately pursue all remedies and relief available to it as contemplated by Paragraph 24 and elsewhere within the instant Release and Settlement Agreement.

As mentioned above, a final determination on each of the following subdivisions will be rendered by Defendant consistent with the time frames set forth in Schedule "A".

- a. Donaker Estates (Rudy and Bernice Kratofil);
  - b. Market Place II (Terry Nelson and MAN Enterprises, L.L.C.);
  - c. Moiese Meadows (Rebecka Z. Lords);
  - d. Riverside Meadows (Stanley Norgaard as Trustee of Norgaard Family Trust);
  - e. Sandhill Ridge (Big Sky Development Group, L.L.C.);
  - f. SS04, block 16, lot 25A, AP (Thomas Gacek);
  - g. Vernon Ranchettes (Jeff and Tracy Scussel); and
  - h. Grantsdale Addition (Kearns Properties, L.L.C.).
3. The Defendant will engage independent consultants as identified through an RFP/RFS process and/or which are already under contract with Defendant to review the following subdivisions under the New Regulations. In the event the Defendant is unable to engage independent consultants already under contract with Defendant but unable or unwilling to review subdivision applications as contemplated by this paragraph, the Defendant shall identify alternative independent consultants and shall process in accordance with the timeline and deadlines set forth on Schedule "A" attached or sooner any Requests for Proposal required by state or county law or county regulation and shall diligently complete any and all activity and processes necessary to engage any such independent consultants as expeditiously as possible so as to allow them to begin the process of reviewing subdivision applications for the above applicants within the Schedule A deadlines or sooner. It is further acknowledged and agreed by the parties hereto that the deadlines set forth in the Schedule A timeline represent the largest time necessary to complete the engaging of independent consultants and the subsequent review of applications and that if the independent consultants are ready, willing and able to complete the review of applications or certain components of applications

more quickly, then the time frames and deadlines set forth on Schedule A shall be adjusted appropriately to establish an expedited timeline.

A final determination on each of the subdivisions described in this Paragraph 3 will be rendered by Defendant consistent with the time frames articulated in Schedule "A" attached hereto and expressly incorporated herein by reference, subject only to delays attendant to acts beyond the control of the Defendant. For purposes of this section, the phrase "delays attendant to acts beyond the control of the Defendant" shall be narrowly construed. Defendant acknowledges that it designed and prepared the Schedule "A" timeline as a condition to this Release and Settlement Agreement and after consideration of all available resources including available staff and independent or outside consultants and all other relevant information, and that the deadlines identified in the timeline constitute a material inducement to the Plaintiffs to enter into this Settlement Agreement. In no event shall this provision be construed to release Defendant from using its best efforts to avoid or remove any causes for delay or from immediately notifying the pertinent applicant, in writing, as soon as it has knowledge of the delay.

Unless as a result of acts beyond Defendant's control, as defined herein, in no event shall this provision be construed to permit the Defendant, its agents, agencies, political subdivisions, representatives and employees, to delay the processing of any application for more than thirty (30) days in the aggregate.

In the event that any application is delayed due to an act or event within the control of the Defendant for more than thirty (30) days in the aggregate, the applicant at issue, as a precondition to pursuing any judicial remedy preserved within this Agreement, must first provide the Defendant with written notice of default. Defendant shall have seven (7) business days from the date on which it receives notice of default within which to cure such default ("cure period"). The Defendant agrees to maintain relevant consultants essentially on standby to be called in to assist the Defendant to timely cure any such default.

In the event that such default is not cured within the cure period, then the applicant at issue will be entitled to immediately pursue all remedies and relief available to it as contemplated by Paragraph 24 and elsewhere within this Release and Settlement Agreement.

As mentioned above, the following subdivisions will be reviewed by the Defendant and independent consultants engaged by Defendant as provided in this paragraph.

- a. Flat Iron Ranch (Flat Iron Ranch Properties, L.L.C.);
- b. Hawks Landing (Pigman Builders); and
- c. Legacy Ranch (Sunnyside Orchards, L.L.C.).

(hereinafter, "large subdivisions")

4. Defendant agrees and clarifies its December, 2006, notices to the Plaintiffs, to the extent that notwithstanding anything said in those notices, and as provided in this Agreement, it will process and review each of the subject applications for preliminary plat decision and that

each applicant will receive a final decision from the governing body on its application for preliminary plat approval, as more fully described in the letter attached hereto as Schedule "B" and by this reference incorporated herein.

5. The Defendant stipulates, covenants and agrees that all fees previously paid to Defendant associated with the review and processing of each large subdivision which have not yet been spent on the application will be specifically allocated to pay those independent consultants referenced in Paragraph three (3) above to perform such functions and, further, that Defendant will, prior to retaining such a consultant(s) to review and process any such application(s), obtain an estimate(s) from said consultant for all work contemplated; that the large subdivisions will be billed for such consulting services on a monthly basis; that payment by Defendant for such services will be made on a monthly basis consistent with invoices which Defendant will promptly provide to an appropriate representative of each such large subdivision; and that any unused funds will be credited and returned to such representative once a final determination on each such application has been rendered.
6. The Defendant stipulates, covenants and agrees that invoices reflecting all services rendered by those independent consultants referenced in paragraph three (3) above will be promptly provided to the appropriate representative of each large subdivision and that such representatives will be permitted and authorized to otherwise review such invoicing and statements provided to Defendant reflecting all such services.
7. The Defendant stipulates, covenants and agrees that it will issue a memorandum of understanding or other appropriately styled document in the form attached hereto as Schedule "C" and by this reference incorporated herein which acknowledges and codifies the County's regulatory interpretation and agreement that, absent applicant assent as expressed in this Settlement Agreement, no application at issue, to the extent modified, supplemented and/or "resubmitted" for sufficiency review to the County, will be reviewed, processed or treated by any County agent, representative or employee as a "new" subdivision application and that no application, regardless of how many times it may eventually be modified, supplemented or re-submitted for sufficiency review prior to the rendering of a final determination by the Ravalli County Board of County Commissioners, will be subject to County subdivision regulations or zoning resolutions or regulations in effect as of October 1, 2006.
8. The Defendant stipulates, covenants and agrees that each of the Plaintiffs' applications will be accorded the unbiased and unprejudiced evaluation, review, processing and treatment to which any other applicant would be entitled and the County affirmatively agrees and covenants that it will do so fairly, without delay, in good faith, in conformity with governing statutory and regulatory authority, without retaliatory conduct and consistent with the methods and bases for evaluation and ultimate decision-making applicable to subdivision applications submitted by strangers to the Action.
9. Defendant agrees that, absent landowner consent, neither Defendant nor any of its agents, servants, employees, representatives, assignees or agencies, or any of them, will take, approve or ratify any action to zone any of the real property that is the subject of any of the applications listed in Paragraphs 2 and 3 above, until the governing body makes a decision on the respective application for preliminary plat. Defendant agrees that, absent landowner consent, if preliminary plat approval is granted to any of the applications listed in Paragraphs

2 and 3 above, neither Defendant nor any of its agents, servants, employees, representatives, assigns or agencies, or any of them, will initiate any action to zone any of the real property included in such preliminary plat approval until each building lot of each phase of the subdivision changes ownership. After preliminary plat approval, the parties agree that the provisions of this paragraph do not apply to zoning initiated pursuant to Title 76, Chapter 2, Part 1, M.C.A..

10. The parties, and each of them, agree not to disparage one another for any act or omission at issue in the Action.
11. The Defendant stipulates, covenants and agrees that with respect to each application which is not subject to the New Regulations, hearings before the Ravalli County Board of County Commissioners or the Planning Board will be limited to one (1) in number unless new information is presented at any such hearing. Any such hearing on new information will be governed by Sections 3-2-6(b) and 3-2-7 of the New Regulations.
12. The parties stipulate and agree to take all appropriate actions to stay the Action pending final determinations being rendered on each of the applications by the Ravalli Board of County Commissioners and the parties further stipulate and agree that once final determinations have been rendered on all of the applications by the Ravalli Board of County Commissioners ("Final Determinations"), the parties will execute any and all documents appropriate and reasonably necessary to dismiss the Action with prejudice without costs and waiving all rights of appeal including, but not limited to, a stipulation of dismissal pursuant to Fed.R.Civ.P. 41. ("Stipulation of Dismissal").
13. Once Final Determinations have been rendered on each of the applications and assuming that prior to the rendering of a Final Determination no motion alleging breach or default of any stipulation, covenant or agreement of this Settlement Agreement filed by one or more Plaintiffs is pending in the United States District Court, Plaintiffs, and each of them, fully and forever release and discharge Defendant, its agents, servants, representatives, employees, affiliates, subsidiaries, officers, directors, successors, predecessors in interest and insurers from any and all actions, claims, causes of action, demands, or expenses for damages or injuries, whether asserted or unasserted, known or unknown, foreseen or unforeseen, in any way related to or arising out of the submissions of the applications to the Defendant or to Defendant's acts or omissions in promulgating or timely adopting subdivision regulations compliant with Montana Senate Bill SB 116. Provided, however, that nothing set forth herein shall be construed to constitute a waiver or release of Plaintiff(s)' rights to bring an action for breach of this Agreement in the event that a Final Determination violates the provisions of paragraph 8 hereunder. Furthermore, nothing contained herein shall constitute a waiver or release of Plaintiff(s)' rights to contest on the merits through available appeal or other available legal means any adverse decision on the merits of any subdivision application subject hereto.
14. It is expressly understood that the within Release and Settlement Agreement is accepted as the sole consideration for full and final satisfaction and accord to compromise disputed claims, that neither the settlement nor the negotiations for settlement shall be considered as an admission of liability by Defendant and that the Defendant expressly denies any liability for any injury or damages of any kind or nature to any other party hereto.

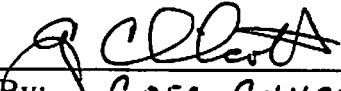
15. The parties have carefully read the foregoing, discussed its legal effect with each of their attorneys, understand the contents thereof, and sign the same of their own free will and accord.
16. This Release shall be binding upon each party's agents, agencies, political subdivisions, servants, representatives, employees, heirs, successors, personal representatives and assigns.
17. The parties agree that no promise or inducement that is not herein expressed has been made to them and that in executing this Release and Settlement Agreement they do not rely upon any statement or representation made by any person, firm or corporation hereby released or by any agent, attorney, insurer or other person representing the parties.
18. The Parties agree and acknowledge that the terms of this Release and Settlement Agreement are contractual and not a mere recital.
19. The within Release and Settlement Agreement is deemed to be made in the State of Montana and it and the legal relations amongst the parties shall be governed and construed according to the laws of the State of Montana.
20. The parties agree that the provisions of the within Release and Settlement Agreement are severable and that if any provision is found to be contrary to law or otherwise invalid all remaining provisions shall remain in full force and effect.
21. With regard to the subject matter stated herein, this Release and Settlement Agreement constitutes the entire, final and integrated agreement between the parties and fully supersedes all prior understandings, representations and warranties. This Agreement may only be modified in a written agreement signed by all parties.
22. This Release and Settlement Agreement and all instruments or documents in accordance herewith may be executed in one or more counterparts or duplicates, and via electronic facsimile, each of which shall be deemed to be an original copy of this Agreement and all of which, when taken together, shall be deemed to constitute one and the same Release and Settlement Agreement.
23. The within Release and Settlement Agreement will become effective upon its execution by all parties to the Action and their respective counsel.
24. Any party hereto who is compelled to seek judicial intervention to seek compliance by any other party in default or breach of any of the terms and conditions of the within Release and Settlement Agreement will be entitled to seek all judicial relief available to it in the Action including, but not limited to, damages, interest, approval of its application and the recovery of his, hers or its reasonable attorney's fees and costs proximately incurred thereby.
25. The parties expressly acknowledge and agree that time is of the essence with respect to the within Release and Settlement Agreement and, specifically, with respect to all timelines established by Schedule "A" attached hereto and expressly incorporated herein by reference.

26. The Defendant stipulates, covenants and agrees that each of the applications will enjoy priority status as to any as yet unsubmitted subdivision application ("unsubmitted application") from any as yet unidentified third party and that no such unsubmitted application will serve to delay the timely processing of the applications consistent with the timelines established by Schedule "A".

DATED this 5<sup>th</sup> day of June, 2007.

CAUTION: READ BEFORE SIGNING!

RAVALLI COUNTY, MONTANA

By:   
Its: GREG CHILCOTT  
CHAIRMAN

APPROVED BY:

Allen B. Chronister, Esq.  
Attorney for Defendant

CAUTION: READ BEFORE SIGNING!

Rebecka Z. Lords

FLAT IRON RANCH, L.L.C.,

By: \_\_\_\_\_  
Its: \_\_\_\_\_

BIG SKY DEVELOPMENT GROUP,  
L.L.C.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

SUNNYSIDE ORCHARDS, L.L.C.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

KEARNS PROPERTIES, L.L.C.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Thomas Gacek

Rudy Kratofil

Bernice Kratofil

BITTERROOT LAND CO., L.L.C.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Jeff Scussel

Tracy Scussel

NORGAARD FAMILY TRUST

By: Stanley Norgaard  
Its: Trustee

Terry Nelson

MAN ENTERPRISES, L.L.C.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

APPROVED BY:

William K. VanCanagan, Esq.  
Attorneys for Plaintiffs